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HAROLD B. WILL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 147

SUCCESSION OF LILIAN BELL REYNOLDS

MRS. EDNA REYNOLDS REESE,
MRS. MARGARET REYNOLDS MARTINEZ,
MRS. WILHEMINA REYNOLDS SIEBERT,
MRS. EMMA REYNOLDS BROUILLETTE,
FRANK F. REYNOLDS, WILLIAM G. REYNOLDS,
MRS. MARGARET ST. TAMMANY O'CONNOR
McCARTHY, and GEORGE O'CONNOR,

Petitioners,

versus

FRANK B. WOOD, MRS. FLORENCE AND WILLIAM
C. BINDER, MRS MABEL BERNIER, DIVORCED
WIFE OF HERBERT ROBERTS, MRS. LOUIS
DAVIS, MRS ALICE COBB LAZARUS,
AND MRS. FRED J. FREILER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

Counsel for petitioners:
GERARD HAROLD SCHREIBER,
1707 Pere Marquette Building,
New Orleans, La.
W. BLAIR LANCASTER, JR.
and
THOMAS BARR, III
637 Whitney Building
New Orleans, La.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana, entered in the above-entitled case on February 15, 1954, rehearing denied on March 22, 1954.

OPINIONS BELOW.

The opinion of the lower Court and the Judge's reasons for judgment are a part of the record (R. 152 and R. 154). The opinion of the Supreme Court of Louisiana is not yet reported in the Louisiana Reports, but is reported in 71 So. (2d) 537, which has approval in Louisiana. No opinion was rendered on the denial of the application for rehearing.

JURISDICTION.

The judgment of the Supreme Court of Louisiana was entered on February 15, 1954, and the application for rehearing was refused, without opinion, on March 22, 1954. The jurisdiction of this Court is invoked under *28 U. S. C. Section 1257 (3), the Constitution of the United States, Section 1 of Amendment XIV*, thereto, and the decision of this Court in the case of *Saunders v. Shaw* and *The Board of Drainage Commissioners of The Bayou Terre-Aux-Boeufs Drainage District, et al.*, 244 U. S. 317. 37 S. C. 638, 61 L. Ed. 1163 (1917).

QUESTION PRESENTED.

Whether the Supreme Court of Louisiana can make an independent finding of fact at variance to a fact which was alleged by plaintiffs in their petition, acquiesced in by the defendant, and a trial and judgment predicated on that material fact was had, and, particularly, when said fact was never questioned nor even discussed on appeal by plaintiffs nor defendant.

And whether such action by the Supreme Court of Louisiana, prohibiting petitioners from offering their proof to controvene such fact, is not depriving petitioners

of their property without due process of law, in contravention of *Section 1 of the Fourteenth Amendment to the Constitution of the United States.*

STATUTES INVOLVED.

The pertinent statutory provisions are *Louisiana Constitution of 1921, Article 7, Section 10, Louisiana Revised Civil Code of 1870, Article 1588,* and *Louisiana Revised Statutes of 1950, Title 13, Section 3601.*

STATEMENT.

Miss LILIAN BELL REYNOLDS, a femme sole, died January 25, 1952, survived only by plaintiffs, who are her collateral, legal heirs, and who would be called to her succession in intestacy.

On January 28, 1952, FRANK B. WOOD presented for probate to the Civil District Court for the Parish of Orleans, State of Louisiana, a purported olographic last will and testament of the decedent (R. 7) by petition (R. 3) in which he alleged in paragraph II, that the said purported last will and testament was executed on the 3rd day of August in the year 1945. Appended to said petition was an order, in which the date of the said purported last will and testament is given as the 3rd day of August in the year 1948 (R. 5). The Honorable Frank J. Stich, Judge of Division "E" of the Civil District Court for the Parish of Orleans, State of Louisiana, on January 28, 1952, admitted the purported last will and testament to probate as a last will and testament dated Aug. 3, 1945. (R. 9). Letters testamentary were issued to FRANK B. WOOD (R. 11), and he proceeded to act thereunder.

Petitioners, the collateral heirs of decedent, who were not notified of the probating of her will in violation of the provisions of *Article 935 of the Louisiana Code of Practice* timely filed on April 7, *1952*, a petition to annul the probated will of decedent. Petitioners alleged that the purported last will and testament of the decedent was invalid as an olographic testament as a matter of form, (paragraph V of their petition [R. 34]), because of its uncertainty in date—the uncertainty being the fact that the will was originally dated Aug. 3, 1945, and the decedent had written by superimposition the numeral *8* over the numeral *5* of the year, without obliterating the numeral *5*. Petitioners further prayed for the appropriate orders to protect their interest in the estate. The lower Court granted (R. 38) a temporary restraining order and issued a rule nisi, ordering the said FRANK B. WOOD to show cause why a preliminary injunction should not issue. In answer to the rule nisi, the said FRANK B. WOOD filed an exception, alleging, among other things, that petitioners had no interest to attack the validity of the purported last will and testament of the decedent because she had, under date of August 3, 1945, (R. 46) August 12, 1944, (R. 48) and July 30, 1940, (R. 50) executed three prior olographic wills, in none of which were petitioners named. The said FRANK B. WOOD also alleged that in all of said purported last wills and testaments, the decedent had named him as universal legatee and also appointed him executor (R. 44). Petitioners filed a supplemental petition (R. 52), pointing out that if the later three purported wills offered by the said FRANK B. WOOD were executed by the decedent, there would then be two wills dated August 3, 1945—which were inconsistent with each other—if the probated

document was held to be a valid will as of August 3, 1945; and further pointed out that only in the documents dated August 3, 1945 (both of them) and in the one dated August 12, 1944, had the decedent appointed FRANK B. WOOD testamentary executor, that in the document dated July 30, 1940, she had named FRANK J. WOOD alternative testamentary executor. Petitioners further pointed out that in both documents dated August 3, 1945, the decedent had named one FRANK J. WOOD universal legatee, and, in the one admitted to probate, she had subsequently superimposed a B over the J, without obliterating the J, and had added the words of "of A. M. Smith Wood.". In the documents dated August 12, 1944 and July 30, 1940 the universal legatee named was FRANK J. WOOD. Petitioners further pointed out to the Court that the said FRANK J. WOOD and FRANK B. WOOD were not one and the same person, and that the said FRANK J. WOOD had predeceased the said LILIAN BELL REYNOLDS. The defendant FRANK B. WOOD filed an answer to petitioners' petition and supplemental petition, admitting that the order to present the will for probate showed the will as being dated August 3, 1948, instead of 1945, but said that it was a *typographical error* of defendant's counsel; admitted that the will was probated as one dated August 3, 1945, admitted that the then petitioners were not notified of the probate of the will, and in paragraph V of said answer (R. 56), denied, for lack of sufficient information to justify a belief, that the decedent had superimposed the numeral *8* over the numeral *5* of the year of the probated will. Defendant neither admitted nor denied the allegation of paragraph XV of petitioners' supplemental and amended petition (R. 52), which alleged that the date of the probated will had been changed by superimposition in 1948, stating in his said answer (R. 56)

that the wills were the best evidence of their contents. He further denied in paragraph XVII of his answer that the said FRANK J. WOOD had predeceased the decedent, and averred that the decedent referred to him indiscriminately as FRANK WOOD, FRANK B. WOOD and FRANK J. WOOD, and that he was the FRANK WOOD intended to be named by decedent in all her wills wherever she used the name FRANK J. WOOD. The defendant further prayed alternatively for the probate of the other purported last wills and testaments of decedent, should any be found invalid. The said FRANK B. WOOD specifically pleaded in his answer, paragraph XXIII (R. 58), that the probated will was a valid last will and testament, dated *Aug. 3, 1945* despite the surcharged numeral *5* in the year of date for the reason that the numeral *5* was not obliterated, and the original date written on the last page of said will in long hand by the decedent was certain—and remained unaltered.

Trial was had on the issues as thus made up, and during the course and at the very outset thereof, the Court permitted plaintiffs to amend their pleadings to show that pages 2 and 3 of the purported last will and testament were not manufactured until the year *1946*, even though the will had been probated as one executed in *1945;* and that the document was made up of possibly three or four different documents shuffled together. Counsel for defendant, FRANK B. WOOD, conceded or admitted (R. 196), that an *8* was superimposed over the *5* (also see R. 197 wherein the Court called it an admission of the *8* being superimposed over the *5*, and stated that it was unnecessary to hear an expert testify). In the amendment (R. 205), plaintiffs were permitted to allege that pages 1 and 4 of the probated document were written on different types and grades of paper, that the pages

lacked conformity of ideas (R. 205), and that the date originally written over the signatures of the witnesses on the back of the last page was August 3, *1945*, and that the *5* was later changed to appear as an *8*. Counsel for defendant, FRANK B. WOOD (R. 206), admitted the changes in dates, that pages 2 and 3 were not manufactured until 1946, and that the name of the universal legatee as originally written was FRANK J. WOOD, and that the letter B was superimposed over the J, and the words "of A. M. Smith Wood" later added.

Petitioners qualified a handwriting expert who would have testified to these facts, but the Judge sustained an objection to his testimony because the defendant had admitted the facts petitioners intended to prove by the said handwriting expert. (R. 197).

By judgment of the lower Court (R. 109), the then plaintiffs, who were only five of the legal heirs of decedent, were ordered to make parties plaintiff, or parties defendant, all of the legal heirs of the decedent, which was subsequently done. Plaintiffs were also ordered to make all of the legatees named in the probated will parties defendant, and this also was complied with.

The Honorable F. J. Stich, Judge of the Civil District Court for the Parish of Orleans, did by judgment (R. 151) annul and set aside the probated will and ordered the next will, dated August 3, 1945, probated and issued the necessary orders for the administration of the estate under the new will which he had ordered probated. In his reasons for judgment (R. 154), Judge Stich stated that the date of the beginning of the probated will was

uncertain, and that the date just before the signature could not be considered, because it was August 3, 1945, and pages 2 and 3 had not been manufactured until 1946. The Judge further held that the decedent had intended to name FRANK B. WOOD, when she named FRANK J. WOOD, as the residuary legatee in the will which he had then ordered probated and dismissed the petitioners' petition.

Both petitioners and FRANK B. WOOD appealed suspensively to the Supreme Court of Louisiana from Judge Stich's judgment, petitioners asking that Judge Stich's judgment declaring the probated will invalid be sustained, and that the rest of his judgment be reversed. (Note: The rest of petitioners' contentions are immaterial to this application for writ of certiorari). The defendant, FRANK B. WOOD, appealed, asking that the judgment of Judge Stich annulling the probated will be reversed, and that the said probated will be recognized as a legal, valid, olographic will, executed on August 3, *1945*. Nowhere in the said FRANK B. WOOD'S appeal, nor in his brief in the Supreme Court of Louisiana, did he ask that the said probated will be admitted to probate as a will dated August 3, *1948*. There was no discussion on oral argument even, that the probated will was valid as an olographic will dated August 3, *1948*.

The Supreme Court of Louisiana, through Mr. Justice Hamiter, on February 15, 1954, reversed the judgment of Judge Stich and admitted the probated will to probate as a legal, valid, olographic will dated August *3, 1948*. In his reasons for judgment, Mr. Justice Hamiter stated that a *3* or a *9* could be seen under the *8*, even

though there is not anywhere in this record any intimation that there was anything but a *5* under the *8* which was superimposed thereon, without obliterating the *5*.

SPECIFICATION OF ERRORS TO BE URGED.

The Supreme Court of Louisiana erred:

1. In treating as an issue in the case the existence *vel non* of the *5* over which the *8* had been superimposed, in the date of the will.

2. In effect, having the six associates Justices and the Chief Justice testify in the case by looking at the will and giving their impression of what numeral might have been under the *8*, rather than a *5*.

3. In reversing the judgment of the lower Court and admitting to probate an olographic will with an uncertain date, without remanding the case to the lower Court if the Supreme Court of Louisiana felt any further evidence was necessary in regard to the date.

4. Not permitting petitioners to meet the issue raised by it, for the first time in its opinion, and present the evidence cut off by the Judge of the lower Court.

REASONS FOR GRANTING THE WRIT.

Petitioners, the legal heirs of decedent, are being deprived of an estate of over $100,000.00, without due process of law, contrary to the *Fourteenth Amendment* to the *Constitution of the United States.*

1. The pleading and practice Act of Louisiana (R. S. 13:3601 et seq. copied in part in the appendix)

requires that the petitioners allege articulately each fact on which they intend to rely. The defendant must admit or deny each fact in his answer. Once a fact is alleged by the plaintiff and admitted by the defendant, that fact is no longer an issue in the case. Petitioners alleged in their original and supplemental petitions the fact that the date as originally written in the probated will was Aug. 3, *1945*, and that the decedent had superimposed an *8* over the *5*, without obliterating the *5*. The defendant, on the trial of the matter, admitted this fact, although he had originally denied it in his answer. That fact was no longer an issue in the case. See: *Miles Planting & Mfg. Co. v. Ware, et al.*, 142 La. 1026, 78 So. 104,

(Syllabus by the Court).

> "After an allegation by plaintiff in his petition acquiesced in by defendant of the existence of a material fact and a trial and judgment predicated thereon, the existence vel non of such fact cannot be regarded as an issue in the case, or as open to discussion on the appeal. A litigant is not expected to prove or disprove that which his opponent alleges and he is willing to admit."

See also: *Brock, State Bank Commissioner v. Citizens Bank & Trust Co. (Citizens Building & Loan Ass'n., Intervenor)*, 187 La. 1078, 175 So. 673; *Grosjean, Supervisor of Public Accounts v. Cooney Petroleum Co., Inc.*, 181 So. 567; *Sims v. Matassa* (two cases), 200 So. 666.

2. The members of the Supreme Court of Louisiana by looking at the probated will and stating that it

looked as though there were a *3* or a *9* under the *8* and that there was not a *5*, completely changed an issue in the case which was no longer open to controversy. The defendant had consistently maintained that the will was good as one dated Aug. 3, *1945*, and had prayed that the will be probated and executed as one dated Aug. 3, *1945*. Nowhere in the lower Court, nor even in brief or oral argument in the Supreme Court, had the defendant ever asked that the will be probated as one dated Aug. 3, *1948*. The Supreme Court by admitting the will to probate on its independent finding of fact as one dated Aug. 3, *1948*, granted the defendant something he did not ask for in the lower Court, nor in the Appellate Court.

The Supreme Court of Louisiana, under *Article 7, Section 10 of the Louisiana Constitution of 1921*, is, insofar as this matter is concerned, an Appellate Court. It has said:

Merrill v. Theard, 187 La. 55, 174 So. 107, Supreme Court of Louisiana (1937) at page 108:

> "The function of this court is to review the judgments and rulings of inferior courts only on the facts and pleadings presented to them, as disclosed by the transcripts of the records brought up here."

The fallacy of the Supreme Court's decision is demonstrated by an illustration: If a wife had sued her husband to regain the management of her separate and paraphernal property and the lower Court had found in

favor of the wife, and the husband had appealed to the Supreme Court of Louisiana, and then the Supreme Court of Louisiana had decided that the wife should have a divorce, rather than the management and control of her separate and paraphernal property, and had reversed the judgment of the lower Court and granted the wife a divorce. Something she and her husband had not asked for and did not wish.

The only issue raised by the pleadings and the defendant was whether or not the probated will was valid as a will dated Aug. 3, *1945*. That is the only matter which could be considered by the Supreme Court of Louisiana. See *A Sulka & Co. v. City of New Orleans*, 208 La. 585, 23 So. (2d) 224, Supreme Court of Louisiana (1945), at page 229:

> "It is elementary that he who urges the unconstitutionality of a law must especially plead its unconstitutionality and show specifically wherein it is unconstitutional, and that issues not raised by the pleadings are not properly before this court and cannot be considered on appeal. State v. Great Atlantic & Pacific Tea Co., 190 La. 925, 183 So. 219; Mouledoux v. Maestri, 197 La. 525, 2 So. (2d) 11."

3. If the Supreme Court of Louisiana felt that more evidence was necessary concerning the date of the probated purported will, it should have remanded the case to the lower Court with instructions to take more

evidence. Instead of doing this, the Supreme Court of Louisiana substituted its independent appraisal of the purported last will and testament, and admitted to probate a will which, from the entire record in this case, has an uncertain date. An olographic will, without a certain date is invalid, see *Succession of Buck*, 208 La. 556, 23 So. (2d) 215, Supreme Court of Louisana (1945), and the French authorities therein cited; at page 224:

> " 'If the testator has written by superimposing (en surcharge) another date, without obliterating the first, the date would be uncertain and the testament is null.' "

If the Supreme Court of Louisiana felt that an *8* was not superimposed over the *5*, without obliterating the *5*, it should have remanded the case to the lower Court to permit petitioners to put in the evidence of their handwriting expert, which was offered in the lower Court and excluded by the Judge after the defendant had admitted that fact to be true, and the Judge of the lower Court had then stated that there was no necessity for any testimony because of the admission of defendant (R. 196). The failure of the Supreme Court of Louisiana to remand the case to the lower Court to permit petitioners to introduce their evidence is a denial of due process of law under *Section 1 of the Fourteenth Amendment to the Constitution of the United States.*

Under the practice in the Supreme Court of Louisiana, no new matters may be raised on the application

for rehearing which was timely filed by petitioners. The only matters to be gone into on the rehearing are matters raised in the opinion of the Court.

The *Fourteenth Amendment* is a cloak about every litigant in the State Courts. It need not be specially pleaded to protect the litigants. Petitioners could not foresee that the Supreme Court of Louisiana would substitute its independent fact for the established fact in the lower Court. The defendant by admitting the allegation of petitioners that an *8* was superimposed over a *5*, proved that fact more conclusively than petitioners' handwriting expert could have, who would have unequivocally testified that the *5* was not obliterated.

The late Mister Justice Holmes, in the case of *Saunders v. Shaw* and *The Board of Drainage Commissioners of The Bayou Terre-Aux-Boeufs Drainage District, et al.*, 244 U. S. 317, 37 S. C. 638, 61 L. Ed. 1163 (1917) squarely laid down the rule and reason why petitioner's petition for writ of of certiorari should be granted in this matter, at page 319:

> "Probably the majority of the Supreme Court thought that it was so plain on the uncontroverted facts that the case was within the principle of The Myles Salt Company's case that to remand it would be an empty form—a mere concession to technicality. It may turn out so, but we do not see in the record an absolute warrant for the assumption and

therefore cannot be sure that the defendant's rights are protected without giving him a chance to put his evidence in.

The question remains whether the writ of error can be maintained. The record discloses the facts but does not disclose the claim of right under the Fourteenth Amendment until the assignment of errors filed the day before the Chief Justice of the State granted this writ. Of course ordinarily that would not be enough. But when the act complained of is the act of the Supreme Court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard and therefore was not bound to ask a ruling or to take other precautions in advance. The denial of rights given by the Fourteenth Amendment need not be by legislation. Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S. 278. It appears that shortly after the Supreme Court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the Chief Justice of the State by his assignment of errors. We do not see what more he could have done."

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

New Orleans, Louisiana, June 15, 1954.

Respectfully submitted,

Counsel for petitioners:

GERARD HAROLD SCHREIBER,
1707 Pere Marquette Building,
New Orleans, La.

W. BLAIR LANCASTER, JR.
and
THOMAS BARR, III

by:

THOMAS BARR, III
637 Whitney Building
New Orleans, La.

APPENDIX.

LOUISIANA REVISED STATUTES of 1950, Title 13, Section 3601:

"Form and contents of pleadings; rule for judgment; verification; certificate accompanying exception; application to intervention, third opposition and warranty

In the conduct of civil causes in the district courts, other than appeal from justice of the peace courts, the following rules of practice shall be observed end enforced:

(1) The plaintiff in his petition shall state his cause of action articulately, that is to say, he shall, so far as practicable, state each of the material facts upon which he bases his claim for relief in a separate paragraph, separately numbered. The petition shall be in all cases verified as hereinafter provided.

(2) The defendant, in his answers, shall either admit or deny specifically each material allegation or fact contained in plaintiff's petition; but nothing in this Section contained shall be construed as affecting in any way the existing rules of practice in regard to what defenses must be specially pleaded by a defendant.

The denial by the defendant in such case may be based upon lack of sufficient information to justify a belief in regard to the allegation in question, but in such case the denial must be expressly so qualified.

The answer, both as to the admission or denials, of the allegations of the petition, and as to allegation of a new matter, shall, in all cases, be verified as hereinafter provided.

(3) All material allegations of fact contained in the petition which are not denied in the answer shall be deemed to be admitted.

(4) At any time after the answer is filed the plaintiff may by rule submit to the court the question of his right to a judgment upon the petition and answer. For the purpose of the trial of such rule all material allegations of fact contained in the petition and not denied in the answer, and all allegations of fact contained in the answer, shall be deemed and taken as true, provided, however, that this proceeding by the rule for judgment on the petition and answer shall not lie in any case in which there may be a demand in warranty by the defendant, or in which there has been filed a petition of intervention, or a third opposition, unless the state of the pleadings be such as to justify a judgment at the same time upon the demand in warranty, the petition of intervention, or third opposition, as the case may be; provided this proceeding by rule for judgment on the petition and answer shall not lie in any action for divorce, separation from bed and board, annulment of marriage or to any case where the community, paraphernal or dotal rights of a married woman may be involved.

If, upon the consideration of the petition and answer as above provided, the court shall be of the opinion that the plaintiff is entitled to a judgment, it shall proceed to render and sign such judgment in the same manner and form and with the same effect as if a trial had been had upon evidence regularly adduced, and such judgment shall constitute for all purposes a definitive judgment. If such judgment so rendered be for less than the amount claimed by the plaintiff, jurisdiction of the cause shall be retained in so far as the balance is concerned. In no such case, if the answer sets forth a legal cause of action by way of reconventional demand and is properly verified, shall the plaintiff be entitled in any event to a judgment for more than the difference between the amount found to be due the plaintiff and the amount of the reconventional demand, and in any such case, jurisdiction of the cause shall be retained by the court as regards the balance on the plaintiff's claim and the defendant's reconventional demand.

If, upon consideration of the petition and answer, as above provided, the court shall be of the opinion that the plaintiff is not entitled to judgment, it shall dismiss the rule, and the fixing and trial of the cause shall be proceeded with in the same manner and form as if such rule had not been taken.

No appeal shall lie from such judgment dismissing such rule."

Louisiana Constitution of 1921, Article 7, Section 10:

"Supervisory powers—Original and appellate jurisdiction.—The Supreme Court shall have control of, and general supervision over all inferior courts and shall have further jurisdiction as follows:

* * *

In all civil and probate cases where the Supreme Court is given appellate jurisdiction, the appeal shall be both upon the law and the facts."

* * *

Louisiana Revised Civil Code of 1870, Article 1588:

"Olographic wills.—The olographic testament is that which is written by the testator himself.

In order to be valid, it must be entirely written, dated and signed by the hand of the testator. It is subject to no other form, and may be made anywhere, even out of the State."

Louisiana Code of Practice, Article 935:

"Summoning witnesses to prove will—Notice to heirs.—The party praying for the opening and proof of the will, shall cause to be summoned the number of witnesses possessing the qualities required for such proof, and if the presumptive heirs of the deceased or any of them reside in the place, he shall give them notice in writing, that they may attend, if they think proper, at the opening and proof of the will."

CERTIFICATE OF SERVICE.

I, the undersigned of counsel for Petitioners for writ of certiorari, herewith certify that a copy of the foregoing petition has been served on Mr. Charles E. Richards, Attorney for Frank B. Wood, Respondent; Mr. James A. Comiskey, Attorney for Mrs. Florence and William C. Binder, Mrs. Mable Bernier, divorced wife of Herbert Roberts, and Mrs. Louis Davis; Mr. Lloyd J. Cobb, Cobb & Wright, Attorneys for defendant, Mrs. Alice Cobb Lazarus; and Mr. Robert G. Hughes and Reid & Reid, Attorneys for defendant, Mrs. Fred J. Freiler, by leaving copies at their respective offices in the City of New Orleans, State of Louisiana. I do further certify that all of said counsel have available to them in the Supreme Court of Louisiana, the office of which is in the City of New Orleans, State of Louisiana, a copy of the record and transcript of this cause in the Supreme Court of the State of Louisiana. I further certify that Mr. Charles E. Richards, counsel for respondent Frank B. Wood, is the only counsel who briefed or argued the matter in the Supreme Court of the State of Louisiana, and, therefore, that is the reason he is the only counsel who joined in the stipulation to dispense with the printing of the record.

GERARD HAROLD SCHREIBER

THOMAS BARR, III
Of Counsel for Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

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MRS. MARGARET REYNOLDS MARTINEZ,
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Respondents.

STIPULATION TO DISPENSE WITH PRINTING OF RECORD.

It is stipulated by and between Gerard Harold Schreiber, Thomas Barr III and W. Blair Lancaster, Jr., Attorneys for petitioners, Mrs. Edna Reynolds Reese, Mrs. Margaret Reynolds Martinez, Mrs. Wilhemina Reynolds Siebert, Mrs. Emma Reynolds Brouillette, Frank F. Rey-

nolds, William G. Reynolds, Mrs. Margaret St. Tammany O'Connor McCarthy, and George O'Connor, petitioners for writ of certiorari, and Charles E. Richards, Attorney for respondent, Frank B. Wood, that the printing of the record in this matter may be dispensed with for the consideration by this Honorable Court of petitioners' petition for writ of certiorari;

It is further stipulated by and between counsel that in the event this Honorable Court should grant petitioners' petition for writ of certiorari, that counsel for both parties shall have the right to designate what portions of the record they wish printed for the consideration on the merits by this Honorable Court and reserve to themselves the right to refer to portions of the certified transcript which are not printed.

New Orleans, Louisiana, June 15, 1954.

Counsel for Petitioners:

GERARD HAROLD SCHREIBER,
W. BLAIR LANCASTER, JR.

and

THOMAS BARR III

By_____
THOMAS BARR III,

Counsel for Respondent, Frank B. Wood:

CHARLES E. RICHARDS,

Counsel for Respondents, Mrs. Florence and William C. Binder, Mrs. Mabel Bernier, divorced wife of Herbert Roberts and Mrs. Louis Davis:

JAMES A. COMISKEY,

Counsel for Respondent, Mrs. Alice Cobb Lazarus:

LLOYD J. COBB, COBB & WRIGHT,

Counsel for Respondent, Mrs. Fred J. Frieler:

ROBERT G. HUGHES and
REID & REID,

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. _____

SUCCESSION OF LILIAN BELL REYNOLDS

MRS. EDNA REYNOLDS REESE,
MRS. MARGARET REYNOLDS MARTINEZ,
MRS. WILHEMINA REYNOLDS SIEBERT,
MRS. EMMA REYNOLDS BROUILLETTE,
FRANK F. REYNOLDS, WILLIAM G. REYNOLDS,
McCARTHY, and GEORGE O'CONNOR,

Petitioners,

versus

FRANK B. WOOD, MRS. FLORENCE AND WILLIAM C. BINDER, MRS. MABEL BERNIER, DIVORCED WIFE OF HERBERT ROBERTS, MRS. LOUIS DAVIS, MRS. ALICE COBB LAZARUS, AND MRS. FRED J. FREILER,

Respondents.

MOTION TO DISPENSE WITH PRINTING OF RECORD.

On Motion of Mrs. Edna Reynolds Reese, Mrs. Margaret Reynolds Martinez, Mrs. Wilhemina Reynolds Siebert, Mrs. Emma Reynolds Brouillette, Frank F. Reynolds, William G. Reynolds, Mrs. Margaret St. Tammany O'Connor McCarthy, and George O'Connor, through their counsel, and on suggesting to the Court that the record heren consists of four hundred and forty-seven (447) typewritten pages, and the cost of printing thereof would be prohibitive to petitioners in that their financial resources would not permit them to deposit with the Clerk of this Honorable Court the necessary costs to print the record herein in order for this Honorable Court to consider their petition for certiorari; and on further suggesting to the Court that there is filed in this record a stipulation to dispense with printing the record for the consideration of petitioners' petition for certiorari between their counsel and counsel for the defendant, Frank B. Wood, who was the only defendant who briefed and argued this matter in the Supreme Court of Louisiana;

IT IS ORDERED that the record herein not be printed for the consideration of petitioners' petition for certiorari.

Washington, D. C., June , 1954.

JUSTICE.

Counsel for Petitioners:
GERARD HAROLD SCHREIBER,
W. BLAIR LANCASTER, JR.

and

THOMAS BARR III

By_____
THOMAS BARR III,

Counsel for Respondent, Frank B. Wood:

CHARLES E. RICHARDS,

Counsel for Respondents, Mrs. Florence and William C. Binder, Mrs. Mabel Bernier, divorced wife of Herbert Roberts and Mrs. Louis Davis:

JAMES A. COMISKEY,

Counsel for Respondent, Mrs. Alice Cobb Lazarus:

LLOYD J. COBB, COBB & WRIGHT,

Counsel for Respondent, Mrs. Fred J. Frieler:

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MRS. MARGARET ST. TAMMANY O'CONNOR
McCARTHY, and GEORGE O'CONNOR,

Petitioners,

versus

FRANK B. WOOD, MRS. FLORENCE AND WILLIAM
C. BINDER, MRS. MABEL BERNIER, DIVORCED
WIFE OF HERBERT ROBERTS, MRS. LOUIS
DAVIS, MRS. ALICE COBB LAZARUS,
AND MRS. FRED J. FREILER,

Respondents.

To Charles E. Richards, Esq., Counsel for Respondent, Frank B. Wood:

YOU ARE HEREBY NOTIFIED that a petition for a writ of certiorari in the above-entitled cause was filed in the Supreme Court of the United States on the day of June, 1954.

A printed copy of the petition and brief are served upon you herewith.

GERALD HAROLD SCHREIBER
1707 Pere Marquette Building
New Orleans, La.

W. BLAIR LANCASTER, JR.
and
THOMAS BARR III

by:

THOMAS BARR III
637 Whitney Building
New Orleans, La.
Counsel for Petitioners.

SERVICE ACCEPTED this day of , 1954.

CHARLES E. RICHARDS,
Counsel for Respondent, Frank B. Wood.
Address 742 National Bank of
Commerce Bldg., New Orleans,
Louisiana.

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OCTOBER TERM, 1953

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Respondents.

To James A. Comiskey, Esq., Counsel for Respondents, Mrs. Florence and William C. Binder, Mrs. Mabel Bernier, divorced wife of Herbert Roberts and Mrs. Louis Davis.

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Counsel for Petitioners.

SERVICE ACCEPTED this day of , 1954.

JAMES A. COMISKEY, Esq.,
Counsel for Respondents, Mrs. Florence and William C. Binder, Mrs. Mabel Bernier, divorced wife of Herbert Roberts and Mrs. Louis Davis,
1309 National Bank of Commerce Bldg.,
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Respondents.

To Lloyd J. Cobb, Esq., Cobb & Wright, Counsel for Respondent, Mrs. Alice Cobb Lazarus.

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THOMAS BARR III

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THOMAS BARR III
637 Whitney Building
New Orleans, La.
Counsel for Petitioners.

SERVICE ACCEPTED this day of , 1954.

LLOYD J. COBB, Esq., COBB & WRIGHT,
Counsel for Respondent, Mrs. Alice Cobb Lazarus.
902 Whitney Bldg., New Orleans,
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Respondents.

To Robert G. Hughes, Esq., and Reid & Reid, Counsel for Respondent, Mrs. Fred J. Freiler.

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and
THOMAS BARR III

by:

THOMAS BARR III
637 Whitney Building
New Orleans, La.

SERVICE ACCEPTED this day of , 1954.

ROBERT G. HUGHES, Esq., and
REID & REID,
Counsel for Respondent, Mrs. Fred J. Freiler.
803 American Bank Bldg.,
New Orleans, Louisiana.